BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation into the Request of TDS Datacom, Inc.

Pursuant to 47 U.S.C. § 251(f)(1) to Terminate the
Rural Telephone Company Exemption of Mid-Plains, Inc.

Application of KMC Telecom, Inc. for Approval to Expand
Authorization to the Territory Served by Mid-Plains Telephone, Inc.

Application of Mid-Plains Telephone, Inc. for Authority
to Implement a Regulatory Method Alternative to
Traditional Rate-of-Return Regulation

Application of TDS Datacom, Inc., for Approval to Expand
Authorization to the Territory Served by Mid-Plains Telephone, Inc.

ORDER FOR REOPENING, NOTICE OF INVESTIGATION, NOTICE OF PREHEARING CONFERENCE AND HEARING, AND NOTICE OF ASSESSMENT OF COSTS

Prehearing Conference Date: February 23, 1998 - 9:00 a.m.	Public Service Commission Building 610 North Whitney Way Amnicon Falls Hearing Room (Rm. 1300)
Hearing Begins: March 30, 1998- 9:00 a.m.	(Location to be announced at Prehearing Conference.)

On March 7, 1997, TDS Datacom, Inc. (TDS), 301 South Westfield Road, Madison, Wisconsin 53717-1707, filed an application to expand its approved service territory as an Alternative Telecommunications Utility in docket 5845-NC-100 to include the territory where Mid-Plains, Inc. (MP), is the incumbent local exchange carrier. On January 30, 1997, KMC Telecom, Inc. (KMC), 1545 Route 206, Suite 300, Bedminster, New Jersey 07921, sought similar expansion of its service territory as specified in docket 2875-NC-101. Treating the applications in parallel, the Commission sought comments and reply comments on six issues relevant to the certification of each applicant. The issues requested comment upon the extent to which MP in its Alternative Regulatory Plan had given consent to new competitors. In its meeting of May 22, 1997, the Commission discussed the comments in both proceedings.

In its discussion, the Commission determined that MP had effectively given implied consent to new entrants for purposes of § 196.50(1)(b)2.b., Stats., and that MP had waived its rural telephone company exemption under 47 U.S.C. §§ 153(37) and 252(f)(1). The effect of the implied consent finding was to permit the certification of the two applicants under state law. The waiver of the rural telephone company exemption meant that a request for interconnection negotiations filed by TDS on March 5, 1997, had effectively commenced the running of the negotiation time periods specified in 47 U.S.C. § 252(b). (See Order of September 24, 1997, in dockets 3650-MA-100/5845-MA-100.) The usual interim certification orders were issued to both applicants on June 26, 1997.

On July 25, 1997, MP filed a petition for judicial review of both certification orders in Mid-Plains, Inc. v. Public Service Commission of Wisconsin, Dane County Circuit Court Case No. 97-CV-2006, the Honorable Richard Callaway, Branch 6, presiding. KMC and TDS both timely entered appearances in the proceeding. The matter was briefed and oral arguments were held on December 16, 1997. At the conclusion of the arguments, Judge Callaway found certain "ambiguities" in the Plan and the approval Order in docket 3650-TI-102, and on January 8, 1998, ordered a remand of the matter to the Commission pursuant to § 227.57(7), Stats. Judge Callaway, however, did not vacate the certifications, which remain effective at this time. On January 29, 1998, the Commission determined to hold a hearing to comply with Judge Callaway's order. At its open meeting of February 10, 1998, the Commission denied MP's motion to reopen the KMC and TDS certifications because Judge Callaway's order did not compel such action.

With return of the Commission's core findings supporting certification, both KMC and TDS have become concerned about protecting their ability to do business and have communicated their concerns to Commission staff. They again raise the alternative applicability of 47 U.S.C. § 253 and § 196.50(1)(b)2.d., Stats., to sustain certification if implied consent is not found.

On January 14, 1998, TDS filed a request for termination of MP's rural telephone company exemption pursuant to 47 U.S.C. § 251(f)(1), docket 05-TI-172. This appears to be a provisional application in case the Commission were to determine that no waiver of the rural telephone company exemption occurred, which would likely render invalid any interconnection agreement approval in dockets 3650-MA-100/5845-MA-100. This request must be decided by the Commission within 120 days, according to 47 U.S.C. § 251(f)(1)(B), upon the requester giving notice to the Commission. TDS' interconnection request to MP was dated March 5, 1997. A formal termination hearing is now necessary because of Judge Callaway's remand order on the Commission's finding of MP waiver, which originally mooted the need for a termination proceeding based on TDS' earlier termination request dated May 2, 1997.

In dockets 3650-MA-100/5845-MA-100, on February 10, 1998, the Commission accepted the portions of the Interconnection Agreement establishing duties under 47 U.S.C. § 251(a) and (b), and provisionally rejected the provisions implementing duties under 47 U.S.C. § 251(c), pending a completion of the hearing in these dockets on the issue of MP waiver of its rural telephone company exemption and possible termination of that exemption pursuant to the above-described request of TDS. Interconnection Agreement duties under 47 U.S.C. § 251(c), therefore, may not be implemented until after the Commission has fully determined whether MP had waived its rural telephone company exemption, as remanded to the Commission by Judge Callaway, or the

Commission independently determines TDS' request without regard to possible waiver of the exemption.

In light of the foregoing, MP's Alternative Regulatory Plan and approval Order are in question as to whether they accomplish their true intent. Both the Plan and the Order may need clarification, modification, or even revocation, depending upon the determination of the issues of consent to new entrants and the waiver of the federal rural telephone company exemption. MP could be found to have acted in accordance with its Plan, or the opposite might be found. The Plan may need express modification, in which case, MP should have an opportunity to accept the Plan as modified or return to regulation under §§ 196.213 and 196.215, Stats. Or the Commission might find that the Plan was obvious as to its intent, that MP failed to adhere to the Plan and the requirements of the Order, and that, therefore, the Plan should be revoked. These multiple issues suggest that the order in docket 3650-TI-102 should be reopened.

The issues for hearing and appropriate Commission action are as follows:

- 1. Whether MP in any manner (e.g., waiver, estoppel, implied consent, or other law) provided "consent" to the provision of services by competitors under § 196.50(1)(b)2.b., Stats.
- 2. Whether certification of KMC and TDS in MP service territory satisfies § 196.50(1)(b)2.d., Stats.
- 3. Whether and to what extent 47 U.S.C. § 253(a) and (b) preclude the interpretation and enforcement of § 196.50(1)(b)2., Stats., in the certification of new telecommunications providers to provide telecommunications services in the traditional service territories of MP.
- 4. Whether MP in any manner (e.g., express or implied waiver, estoppel, or other law) gave up its right to claim a rural telephone company exemption under 47 U.S.C. §§ 153(37) and 251(f)(1).
- 5. Whether under 47 U.S.C. § 251(f)(1) the Commission should independently terminate MP's rural telephone company exemption with respect to the interconnection request of TDS dated March 5, 1997.
- 6. In light of the foregoing issues:
 - a. Should MP's Plan as approved in docket 3650-TI-102 be altered, modified, or revoked?
 - b. Should the Plan be clarified and maintained?
 - c. Has MP violated the provisions of the Plan or the approval Order?
 - d. Should the Plan be revoked or terminated on account of any MP violation of Plan or approval Order terms?
 - e. What other administrative action, if any, not including referral for forfeiture, would be justified and appropriate?

The foregoing issues shall be set for the prehearing conference scheduled hereinafter, but germane sub-issues may be further specified at the prehearing conference. All four dockets are consolidated for hearing. Separate orders are contemplated for dockets 05-TI-172 and 3650-TI-102, but dockets 2875-NC-101 and 5845-NC-101 will be consolidated for decision. It is intended that the order for the latter two dockets address the specific issue returned by Judge Callaway, including however a slight expansion of the scope of the remanded issues to include the terms of the Order and any relevant conduct of MP. A prehearing conference also appears advisable for scheduling of the hearing, setting dates for submission of any pre-filed testimony, and other relevant matters.

This action is classified as a Type III action according to PSC 4.10(3), Wis. Adm. Code. Furthermore, since no unusual circumstances have come to the attention of the Commission which would indicate that significant environmental consequences are likely, neither an environmental impact statement under § 1.11, Stats., nor an environmental assessment is required.

IT IS ORDERED pursuant to § 196.39, Stats., that dockets 2875-NC-101, 3650-TI-102, and 5845-NC-101 are reopened for further investigation and hearing on the issues set forth above.

NOTICE IS HEREBY GIVEN that this matter will be a Class 1 proceeding. See § 227.01, Stats.

NOTICE IS FURTHER GIVEN that the Commission, pursuant to §§ 196.02(1), 196.37(2), and other provisions of ch. 196, Stats., as may be pertinent hereto, will investigate in docket 05-TI-172 the matter of the termination of MP's rural telephone company exemption with respect to TDS' request for interconnection dated March 5, 1997.

NOTICE IS FURTHER GIVEN that a prehearing conference will be held in this matter on the **February 23, 1998, at 9:00 a.m.** in the Amnicon Falls Hearing Room (Room 1300), Public Service Commission building, 610 North Whitney Way, Madison, Wisconsin.

NOTICE IS FURTHER GIVEN that a hearing will be held in this matter commencing at **9:00** a.m., March **30**, **1998**, at a location in, Madison, Wisconsin, to be announced at the prehearing conference, and shall be continued from time to time as deemed necessary by the presiding hearing examiner.

NOTICE IS FURTHER GIVEN that the building at 610 North Whitney Way is accessible to people in wheelchairs through the main floor entrance (Lobby) on the Whitney Way side of the building. Handicapped parking is available on the south side of the building and the building has some wheelchair accessible rest rooms. Any party with a disability who needs additional accommodations should contact Richard Teslaw at (608) 267-9766.

NOTICE IS FURTHER GIVEN that the Commission may deem it necessary in order to carry out its duties herein to investigate the books, accounts, practices and activities of KMC, MP and TDS. The expenses incurred or to be incurred by the Commission which are reasonably attributable to such investigation will be assessed against and collected from KMC, MP and TDS, in accordance with the provisions of §§ 196.203(5) and 196.85, Stats., and ch. PSC 5, Wis. Adm. Code.

Questions regarding this hearing may be directed to John Crosetto, Hearing Examiner, at (608) 266-7165 and other questions may be directed to Nicholas Linden, Assistant Administrator, Telecommunications Division, at (608) 266-8950, or Michael Varda, Legal Counsel, Telecommunications Division, at (608) 267-3591.

Dated at Madison, Wisconsin	
By the Commission.	
Lynda L. Dorr Secretary to the Commission	

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